

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-1585

United States of America,

Appellee,

v.

Rafael Garcia-Zuniga, also known as
Robert Farias, also known as Zuniga
Erasmo Rodriguez,

Appellant.

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Appeal from the United States
District Court for the
Northern District of Iowa.

[UNPUBLISHED]

Submitted: June 11, 2002
Filed: June 20, 2002

Before LOKEN, BYE, and RILEY, Circuit Judges.

PER CURIAM.

Rafael Garcia-Zuniga pleaded guilty to re-entering the United States illegally after deportation, following his conviction for an aggravated felony, in violation of 8 U.S.C. § 1326 (a) and (b). The district court¹ departed upward, finding that Garcia-Zuniga's criminal history was underrepresented, and sentenced him to 68 months imprisonment and 2 years supervised release. On appeal, counsel has moved to

¹The HONORABLE MARK W. BENNETT, Chief Judge, United States District Court for the Northern District of Iowa.

withdraw under Anders v. California, 386 U.S. 738 (1967), and has filed a brief arguing that the district court erred in departing upward.

The district court did not abuse its discretion by departing upward. See United States v. Levi, 229 F.3d 667, 679 (8th Cir. 2000). It properly considered Garcia-Zuniga's past charged and uncharged conduct, as outlined in the unobjected-to presentence report. See U.S.S.G. § 4A1.3; Levi, 229 F.3d at 679; United States v. Beatty, 9 F.3d 686, 690 (8th Cir. 1993); United States v. Davila, 964 F.3d 778, 784-85 (8th Cir.), cert. denied, 506 U.S. 964 (1992). Further, following our independent review, see Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues.

Accordingly, we affirm, and we grant counsel's motion to withdraw.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.